IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 4113 of 2006(M)

PETITIONER:

LEKHA K.R., KUMARAPILLY HOUSE,
KUTTICHIRA P.O., KORMALA.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
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1. THE MANAGER,
L.P.S. OF N.H.S.SCHOOL, IRINJALAKUDA.

2. THE HEADMISTRESS, L.P.S.OF NH SCHOOL,
IRINJALAKUDA.

3. GOVERNMENT OF KERALA, REP. BY ITS
SECRETARY, DEPARTMENT OF GENERAL EDUCATION,
THIRUVANANTHAPURAM.

4. THE ASSISTANT EDUCATIONAL OFFICER,
IRINJALAKUDA.

R1 BY ADVS. SMT.V.P.SEEMANDINI (SR.)
SRI.M.R.ANISON
SRI.V.A.MUHAMMED---R2
SRI.K.E.HAMZA
GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2006 ALONG WITH WPC NO. 8340 OF 2006 AND CONNECTED CASES, THE COURT ON 05/06/2007 DELIVERED THE FOLLOWING:

WP(C) NO: 4113/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. D.DIS. F. 2612/00 DT. 27/11/00.

EXT.P2. COPY OF THE GO DT. 30/6/00.

EXT.P3. COPY OF THE ORDER OF THE R4 DT. 13/2/2001.

EXT.P4. COPY OF THE APPEAL PREFERRED BY THE PETITIONER

EXT.P5. COPY OF THE ORDER IN CMP NO. 17900/01 IN OP NO. 11100/01 DT. 29/3/01.

EXT.P6. COPY OF THE JUDGMENT IN WA NO. 2618/2001 DT. 13/07/01.

EXT.P6A. COPY OF THE ORDER DT. 21/3/2001.

EXT.P7. COPY OF THE GO DT. 7/9/02.

EXT.P8. COPY OF THE MEMO DT. 11/12/2002.

EXT.P9. COPY OF THE REPLY DT. 26/12/2002.

EXT.P10. COPY OF THE ORDER DT. 15/1/2004.

EXT.P11. COPY OF THE ORDER OF THE AEO DT. 15/1/2004.

EXT.P12. COPY OF THE PETITION DT. 14/3/2005.

EXT.P13. COPY OF THE ORDER DT. 28/12/2005.

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A.K. Basheer, J.

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Manager that the teacher is not entitled to claim appointment as a Rule 51A claimant. She is also not entitled to continue as a teacher in the school since she had been discharged after terminating her probation. I shall deal with the contention raised by the Manager and 2 other teachers in WP.11096/06 a little later.

4. Shorn of unnecessary details, the relevant facts which are necessary for disposal of these cases are stated hereunder.

5. It is not in dispute that the Manager appointed the teacher in the school as LPSA with effect from June 14, 2000 in one of the 4 posts sanctioned by the Department. However the Department refused to approve the above appointments stating the reason that those appointments were made during the "ban period" imposed by the Government. The teacher challenged the order passed by the departmental authority before the Government through a revision petition. Interestingly the Manager did not espouse petitioner's cause, though the order of refusal of approval as against the other 3 teachers was challenged by the Manager before the Government. The Government allowed the revision petition filed by the teacher by its order dated September 7, 2002, a copy of which is on record as Ext.P7. The Government held that the appointment of the teacher was liable to be approved with effect from her date of appointment viz., June 14, 2000 and the Assistant Educational Officer was directed to pass

appropriate orders.

6. In this context it is pertinent to note that the Manager had taken up a contention before the Government in the course of the hearing of the revision petition that the probation of the teacher had been terminated and she had been discharged from service as provided under Rule 6(c) of Chapter XIV-A KER. While holding that the order passed by the Manager terminating the probation of the teacher without obtaining approval from the Education Officer was null and void, the Government nevertheless observed that the Manager could terminate the probation of the teacher if her work and conduct were found to be unsatisfactory. However it was made clear that such action should be in conformity with the Rules.

7. On December 11, 2002, 3 months after the Government passed Ext.P7 order, the Manager issued Ext.P8 memo to the teacher directing her to show cause as to why action to discharge her from service should not be taken . The teacher submitted Ext.P9 reply to the show cause notice. The Manager found that the explanation was not satisfactory and therefore passed an order terminating the probation and discharging her from service with effect from March 22, 2001. The above order passed by the Manager was considered by the Assistant Educational Officer as directed by the Government. By his order dated April 15, 2004, the Assistant Educational Officer found that the punishment

imposed on the teacher was a "major" one and therefore the Manager was directed to impose a lesser punishment "as per Rules". A copy of the said order passed by the A.E.O has been produced as Ext.P11.

8. The Manager challenged Ext.P11 order before the Government in a revision petition. The Government passed Ext.P13 order in the revision petition holding that the order of termination of probation passed by the Manager under Rule 6(c) of Chapter XIV-A KER was legal and justifiable. Therefore the Government set aside Ext.P11 order passed by the Asst. Educational Officer. Ext.P13 order has been challenged by the teacher in WP.4113/2006.

9. While the above proceedings relating to termination of probation of the teacher were pending before the statutory authorities, some divisions in the school had to be abolished, since there was fall in strength of students during the academic year 2002-03. By order dated January 13, 2003, a copy of which is on record as Ext.P2, in WP.8340/2006, the Asst. Educational Officer directed the Manager to transfer and accommodate the petitioner and another teacher, in the available vacancies in the upper primary section of the school under the same management. It was further directed that if no such vacancy was available, the two teachers had to be treated as retrenched. The Manager had unsuccessfully challenged the above order before the Government. The order passed by the Government

dismissing the revision petition filed by the Manager is available on record as Ext.P3 in WP.8340/06 filed by the teacher.

10. It appears that the Manager filed a "review" before the Government against the above order (Ext.P3) on February 16, 2006. Immediately thereafter on February 21, 2006 the Government passed Ext.P5 order clarifying that the claim of the teacher for appointment to the post of UPSA could be considered by the Manager in the vacancy which had arisen in the school after June 17, 2005, the date of amendment of Rule 51A. The said order has been challenged by the teacher in WP.8340/06.

11. As mentioned earlier, it is contended by the Manager in her writ petition (WP.13416/06) that the teacher is not entitled to claim the benefit of Rule 51A, since her probation had been terminated and thus she had been discharged from service with effect from March 22, 2001. The Manager challenges the orders passed by the Government to the extent it directs her to give appointment to the teacher as a Rule 51A claimant. She prays that a writ of mandamus be issued to respondents 1 to 4 not to compel her to appoint the teacher either as UPSA or LPSA.

12. As regards the question whether the Manager was justified in terminating the probation of the teacher without obtaining approval from the educational officer, it can be noticed that the Manager has no case that the period of

probation of the teacher had been extended. As noticed earlier, the teacher was appointed in the school with effect from June 14, 2000. It is not in dispute that the Manager had passed the order terminating the probation of the teacher on March 21, 2001 without obtaining approval from the educational officer. Rule 6(c) of Chapter XIV-A postulates that the Manager may, with the approval of the educational officer, terminate the probation and discharge the teacher from service if the work of the probationer is found to be unsatisfactory, at any time before the expiry of the period of probation, after giving the teacher a reasonable opportunity of showing cause against the action proposed to be taken against him. As rightly pointed out by the learned counsel for the teacher, the Manager proceeded to terminate the probation initially without even hearing the petitioner. It is true that after the Government passed Ext.P7 order, the Manager had served a show cause memo to the teacher, to which the teacher had responded. Even after receipt of the explanation from the teacher also, the Manger had not bothered to seek approval from the Educational Officer. The Manager unilaterally decided to terminate the probation. The said order was not approved by the Officer who nevertheless gave liberty to the Manager to impose a lesser punishment as per Rules. But the Government in Ext.P13 order took the view that the action of the Manger was justifiable. In order to come to this conclusion, the Government referred to the so called

finding of the AEO in his Ext.P11 order that the teacher had violated the statutory provision contained in Rule 7 of Chapter XIII KER. But it is pertinent to note that the educational officer had categorically found that the order of termination proposed by the Manger was not warranted, in the facts and circumstances. In Ext.P13, the Government had not adverted to the various contentions raised by the teacher with specific reference to the allegation that the manager had been vindictive because of a family feud involving her husband and the family of the Manager. More importantly, the Government did not consider the question whether the action of the Manager was legal and valid, particularly in view of the fact that the Manager had not admittedly obtained approval before passing the order terminating the probationer. In my view, Ext.P13 order passed by the Government is liable to be set aside on that short ground.

13. In M.Arjun Elayad v. Asst. Educational Officer & Anr. (1979 KLT 972), this Court had occasion to consider an almost identical situation. After interpreting Rule 6(c) this Court held that approval of the Educational Officer had to be obtained by the Manager before he passed an order terminating the probation. This Court even went to the extent of saying that the context and setting in which the provision for approval finds a place in Rule 6(c) indicate that the intention of the rule making authority was that the action specified therein could be taken by the Manager of the school

only with the "previous approval" of the Educational Officer. This Court came to the above conclusion after considering the object and purpose of Rule 6(c). I am inclined to agree with the above view taken by this Court in the above decision.

14. There is yet another aspect which persuades me to take the above view. In Ext.P7 order passed by the Government in the revision petition filed the Manager, the Government had held, and that too after hearing the Manager, that the action of the Manager in terminating the probation without obtaining approval from the Educational Officer was null and void. It is true that ultimately the Government had directed the AEO to approve the appointment of the teacher. It was also observed by the Government that it would be open to the Manger to terminate the probation of the teacher if her work and conduct were found to be unsatisfactory. The Manger had obviously taken fresh steps to terminate the probation taking cue from the above observation, since admittedly he had issued Ext.P8 show cause notice after Ext.P7. I have referred to the above aspect only to highlight the fact that the Manager had never bothered to challenge Ext.P7 order . Of course it is pointed out by learned counsel for the Manager that the said finding had become otiose since the Manager had initiated fresh action and issued Ext.P8 show cause notice. But the fact remains that even after receipt of the explanation to the show cause notice from the teacher, the Manager had not bothered

to seek approval from the educational officer as contemplated under Rule 6C. The Manager had approached the Educational Officer after passing the order of termination of probation and discharging the teacher from duty. This is not what is postulated under Rule 6(c). Therefore the order passed by the Manager is totally illegal and unsustainable at its very inception. If that be the position, the Government could not have given its seal of approval to the action of the Manager. In that view of the matter, Ext.P13 order is liable to be quashed. I do so.

15. The next question that arises for consideration is whether Ext.P5 order in WP.No.8340/06 is legally valid and sustainable. As noticed earlier, the Government took the view that the teacher would be entitled to get appointment as a Rule 51A claimant only against vacancies which arose after June 17, 2005, the date on which Rule 51A was amended. It is pertinent to note that Ext.P4 order was passed after hearing the parties. But Ext.P5 was passed by the Government in modification of Ext.P4 order on the basis of a so called "representation" submitted by the Manager. Curiously, Government did not bother to issue notice to the teacher before passing Ext.P5 order. The said order was passed within one week from the date of receipt of the "representation" behind the back of the teacher. As rightly pointed out by the learned counsel for the Teacher, the Government did not have any power to pass such an order

and that too on the basis of a so called "representation". Ext.P5 order, in my view is liable to be quashed on that short ground. I do so.

16. The Manager and two other teachers have preferred WP.11096/06 challenging Exts.P7 and P8 orders passed by the DEO. By the impugned orders the D.E.O declined the prayer made by the Manager to approve the appointment of petitioners 2 and 3 as UPSA with effect from June 5, 2002. As mentioned in the earlier part of the judgment, the Manager had refused to challenge the order of refusal of approval as against the other teacher (Petitioner in W.P.4113 and 8340 of 2006).

17. It is pertinent to note that Exts.P7 and P8 orders were passed by the original authority under the Act. Indisputably the above orders are appealable before the Deputy Director of Education concerned. Petitioners have not chosen to avail of the statutory remedy. No plausible reasons have been stated as to why this Court should invoke the extra ordinary jurisdiction under Article 226 and entertain this writ petition. Therefore this writ petition is dismissed with liberty to the petitioners to pursue the statutory remedies available to them. I make it clear that the merit of the contentions raised by the petitioners in this writ petition has not been considered by me.

18. In WP.No.13416/06 it is contended by the Manager that the teacher is not entitled to get the benefit of

Rule 51A and seek appointment to the post of UPSA in the school. The above contention has been raised on the basis of the plea that her service as LPSA had been terminated even before declaration of probation and she had been discharged from service. I have found that the order passed by the Manager terminating the probation is not legal, valid or sustainable for the reasons stated in the earlier part of the judgment. Therefore the contention raised by the Manager that the teacher is not entitled to claim the benefit of Rule 51A cannot be sustained. More importantly it is significant to note the Manager had in W.P.NO.11096/06 admitted that the teacher had got approved UPSA service in the school from June 14, 2000 to March 31, 2002. This admission cuts at the root of the case of the Manager.

In the result Ext.P13 in WP.4113/06 and Ext.5 in WP.8340/06 are quashed and these two writ petitions are allowed. WP.13416/06 is dismissed. W.P.No.11096/06 is disposed of with liberty to the petitioners therein to pursue the statutory remedy available to them.

A.K. Basheer

Judge.

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